

Court of Appeals, State of Michigan

ORDER

People of Rochester Hills v Beata Anna Czekaj

Docket No. 286875

LC No. 2008-008796-AR

Elizabeth L. Gleicher
Presiding Judge

E. Thomas Fitzgerald

Deborah A. Servitto
Judges

The Court orders pursuant to MCR 7.205(D)(2) that the July 10, 2008 order is REVERSED and the matter is REMANDED to the 52-3 District Court for further proceedings not inconsistent with this order. The district court abused its discretion in denying defendant's motion to set aside the default, *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007), and defendant presented good cause for setting aside the default judgment. MCR 4.101(D). We note that it appears that the district court relied on MCR 4.101(B). This rule is inapplicable as defendant did not fail to appear or otherwise respond. We are guided in part by this Court's reasoning in *Shawl v Spence Bros, Inc*, 280 Mich App 213, 231; ___ NW2d ___ (2008), in concluding that defense counsel's negligence in appearing 15 minutes late to a hearing should not be attributed to defendant herself, who is procedurally nonnegligent.

This order is to have immediate effect.

This Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

DEC 12 2008

Date

Sandra Schultz Mengel
Chief Clerk